'10

THE GOVERNMENT OF INDIA BILL

VIEWS OF INDIAN STATES

Correspondence relating to a meeting of States' Rulers held at Bombay to discuss the Government of India Bill and a provisional draft Instrument of Accession

Presented to Parliament by the Secretary of State for India
by Command of His Majesty
March 1935

LONDON
PRINTED AND PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE
To be purchased directly from H.M. STATIONERY OFFICE at the following addresses:
Adastral House, Kingsway, London, W.C.2; 120 George Street, Edinburgh 2;
York Street, Manchester 1; 1 St. Andrew's Crescent, Cardiff;
80 Chichester Street, Belfast;
or through any Bookseller

1935
Price 9d. Net

Cmd. 4843

TABLE OF CONTENTS.

	PAGE
1. Introductory Note by the Secretary of State for India -	3
2. Report of Committee of States' Ministers (letter from Sir Akbar Hydari to Sir Bertrand Glancy) - -	5
3. Resolution passed by a meeting of Indian Princes and representatives held at Bombay to consider No. 2 -	13
4. Letter to His Excellency the Governor-General from Their Highnesses the Maharaja of Patiala, the Nawab of Bhopal and the Maharaja of Bikaner - -	14
5. Note enclosed with No. 4 - - - -	15
6. Despatch (Telegraphic) from the Secretary of State for India to the Governor-General in Council - -	28
7. Memorandum attached to No. 6 - - - -	31
8. Provisional draft Instrument of Accession - -	43

Digitized with financial assistance from

H T Parekh FOUNDATION

An Initiative by HDFC WITH YOU, RIGHT THROUGH

on 10 January, 2019

No. 1.

INTRODUCTORY NOTE BY THE SECRETARY OF STATE FOR INDIA.

In the course of the debate on 26th February, I undertook that as soon as I received in detail the criticisms of the Indian States on the Government of India Bill, I would in some appropriate way put Parliament in possession of them. On 5th March I received from the Viceroy the text of a letter addressed to him by Their Highnesses the Maharaja of Patiala, the Nawab of Bhopal and the Maharaja of Bikaner commenting on the Bill. I have since ascertained through the Viceroy that these Princes have no objection to its publication, and it forms No. 4 of the series now presented in this White Paper.

The replies of the Princes to the Viceroy's enquiry about publication of this letter confirm what is stated in the letter itself —that it is in no sense a withdrawal from their adherence to the policy of an All-India Federation. It was sent to the Viceroy as a basis of future negotiations and discussions with a view to facilitate the entry of the Indian States into Federation, and to explain to His Majesty's Government the difficulties which the Princes felt, so far as they had been able to examine the Federal scheme as set out in the Bill. Their Note was prepared in the shortest possible time, and they are anxious that any impression based merely on the manner in which their case is presented should not lead to a misunderstanding of their attitude.

My Despatch to the Viceroy (No. 6 of the series) and the Memorandum which accompanies it will assist to present the matter in its true perspective. The range of apparent difference in regard to the Bill is in the first place narrowed by the fact that certain matters which have been brought into the discussion are quite outside the scope of the Bill. There are certain matters, of which the exercise of the Paramountcy of the Crown is an example, which are undoubtedly of importance to the States; but they have for some years been the subject of discussion between His Majesty's Government and the Princes, and are independent of the form of the Bill, from which they are a distinct issue.

Secondly, these papers will, I hope, dispel any suspicion that His Majesty's Government has departed from any agreements arrived at or from assurances given. In more than one passage of the documents representing the views of the Princes there appears a suggestion that in various particulars the Bill is based upon new decisions by His Majesty's Government. But, except in regard to two points of secondary importance which are referred to in my Memorandum (No. 7 of the series), the provisions of the Bill embody the recommendations of the Joint Select Committee's Report, which, in so far as the Princes are concerned, followed substantially the scheme of the White Paper, which itself was

based on the conclusions of the Round Table Conference. There has been no departure from the principles then agreed.

Thirdly, the range of difference is further narrowed by the fact that His Majesty's Government has, on examination of the Princes' Note, been able to suggest modifications in the presentation of certain details of the Bill which, if accepted by Parliament, should go far, without any sacrifice of the essential principles of the Joint Select Committee's Report, to meet the difficulties which the Princes have felt in respect to them. There remains the problem of the precise manner in which the States are to accede to federation—a problem which arises mainly in connection with clause 6 of the Bill and the form of the Instrument of Accession. This is in itself a difficult problem, if only on account of its novelty and of its far-reaching consequences. But the analysis of the problem in that part of the Memorandum which deals with clause 6 will show that the points of view of the Princes and of the Bill are not, as may have been assumed, inconsistent; the problem, indeed, is less one of opposing political outlook than of drafting technique. The desiderata of His Majesty's Government and of the Princes are not irreconcilable, though the problem remains of bringing them together in the terms of a statutory document. I am confident, however, that the discussions between the legal representatives of the States and the Parliamentary draftsmen, to which the Princes have now agreed, will lead to solutions which will commend themselves alike to the States and to Parliament.

Careful consideration of the documents now available has confirmed the view which I have already expressed that there is no reason for Parliament to delay the further consideration of the Bill pending conclusions on the points with which I have dealt in the Memorandum. I shall, as opportunity arises in discussion of any subsequent clause which may be affected, either propose amendments, or explain to the House the direction in which His Majesty's Government intend to suggest modifications. If it should subsequently appear necessary to put before the House changes in some of the earlier clauses approved by it, the most appropriate method of doing so will have to be considered. But I would emphasise here that our task at the moment is to frame a Constitution for India in such form as may, in the judgment of Parliament, seem best suited to her needs. In doing so, it is our duty to see that while preserving the substance of what in our opinion is essential to the Constitution, the form of the Act shall offer no unnecessary difficulties to the States when the time comes for them to take their decision regarding accession.

No. 2.

STATES' MINISTERS' COMMITTEE REPORT ON GOVERNMENT OF INDIA BILL.

New Delhi,
21st February 1935.

My dear Sir Bertrand Glancy,

Kindly refer to my letter dated New Delhi, the 19th January 1935, with which I forwarded to you copies of the Proceedings regarding some of the proposals of the Joint Select Committee's Report brought under discussion before the Committee of States' Ministers. That Committee, as you are aware, has been meeting in Delhi for the last three days under my Chairmanship to consider the Government of India Bill now before Parliament. I am desired by my colleagues on this Committee, whose names are noted in the margin, to acquaint you with the result of our deliberations with a view to your taking such action as you may deem necessary.

1. Mr. K. A. H. Abbasi (Bhopal).
2. Sir C. P. Ramaswamy Aiyar (Travancore).
3. Pandit Amarnath Atal (Jaipur).
4. Rai Bahadur S. M. Bapna (Indore).
5. Colonel E. J. D. Colvin (Kashmir).
6. Sir Liaqat Hyat Khan (Patiala).
7. Sir Manubhai Mehta (Bikaner).
8. Mr. K. M. Panikkar (Patiala).
9. Sir Prabhashankar Pattani (Bhavnagar).
10. Mr. S. P. Rajagopalachari (Mysore).
11. Mr. Ranadive (Baroda).
12. Mr. D. K. Sen (Mandi).
13. Dr. P. K. Sen (Mayurbhanj).
14. Rao Saheb Y. A. Thombare (Sangli).

The Committee have examined the Bill and the Instrument of Accession clause by clause and concentrated their attention on the most important and crucial provisions, and they feel constrained to observe that in some important respects the Bill departs from the agreed position arrived at during the meetings of the States' representatives with His Majesty's Government. There are, moreover, certain new features embodied in the Bill which raise issues of fundamental importance. The Committee have arrived at unanimous conclusions on all these points and desire to emphasise that the amendments and alterations which they have ventured to suggest are, in their opinion, vital. It is the unanimous opinion of the Committee that, without satisfactory amendments on the lines indicated, it would not be possible for them to recommend to their Rulers and to the States generally the acceptance of the proposed scheme. The Committee summarise the salient points herein below, pointing out that, in some cases, they have not themselves drafted amendments but have indicated the grounds of their disagreement with the Bill as framed.

Clause 2 (1).—It is suggested that the words "by Treaty, grant, usage, sufferance or otherwise" should be omitted in lines 14 and

15 at page 1 in clause 2. The words "or otherwise" are felt to be too indeterminate and liable to unlooked-for extension. The objections of the States to the use of the words "usage and sufferance" are already well known. The Committee also feel strongly that the words at the end of the sub-clause: "or as may be otherwise directed by His Majesty" should be deleted. On the face of them, they enable His Majesty to assign paramountcy powers to anyone whatsoever. It would be possible, for example, to vest in the Federal Railway authority or any other federal body the present powers of the British Government over Railway lands which are included in Deeds of Cession. If these amendments are accepted, the clause will have to be recast and divided into two parts, one dealing with British India and the other with Indian States.

Clause (6).—The Committee is of the unanimous opinion that the scheme of *clause* 6 whereby the Ruler accepts the Act as applicable to his State and to his subjects is unacceptable, for thereby everything in the Act becomes *ipso facto* binding upon the State.

Clause 6 (1), *sub-clause* (*a*), purporting to define the nature and terms of the Instrument of Accession, binds the State to the acceptance of the Act without qualification, and *sub-clause* (*b*) does not enable reservations or conditions other than cutting down the power to make laws under *Schedule* 7, *List* 1. In the opinion of the Committee, it is of vital importance to the States that *sub-clause* (*a*) should be so re-drafted as to make it clear that what are accepted are specific provisions of the Act and that the governing factor in the transaction of accession is the Instrument of Accession, subject to which alone the provisions of the Act are agreed to. Under *clause* 6 (1), as at present drafted, if the Act be accepted without qualification, the Instrument of Accession will operate only in so far as the Act gives it effect. The Committee are also clear that there should be no misapprehension that the acceptance of the Act does not mean or lead to the inference that the legislation is applicable to the States *proprio vigore*. In order to carry out these ideas the Committee have drafted an amendment to *clause* 6 (1) which, in their opinion, contains, in substance, the fundamental requisites. The amendment is set out below, but does not embody the changes that would be necessitated if the Committee's proposals are accepted regarding the necessity of bilateral Agreements of Accession :—

> "6.—(1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession in writing executed by the Ruler thereof whereby the Ruler for himself, his heirs and successors—
>
> "(*a*) declares that by virtue of the said Instrument of Accession he accepts such of the provisions of this Act

as are expressly specified in the Instrument in this behalf, as applicable to his State with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other federal authority established for the purposes of the Federation may exercise in relation to his State such functions as may be vested in them by or under this Act and are exercisable by them by virtue of such Instrument;

"(*b*) specifies which of the matters mentioned in the Federal Legislative List he accepts as matters with respect to which the Federal Legislature may make laws for his State and specifies that his acceptance of any matter with respect to which the Federal Legislature may make laws is subject to such conditions and limitations, if any, as may be so specified; and

"(*c*) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act, so far as they are applicable therein by virtue of his Instrument of Accession."

It will be observed that *sub-clause* (*b*) enables the reservation of administrative powers in regard to subjects which may be in the *Federal List.* One of the consequential amendments will be the deletion of *clause* 6 (7).

In making this amendment the Committee have paid great attention to the amendment proposed by the Secretary of State, which, however, was regarded as not satisfying the tests treated as essential by the States.

Clause 8.—The Secretary of State has suggested an amendment to this clause. The Committee are of the opinion that *clause* 8 should provide that the executive authority of the Federation shall be subject to conditions that may be laid down and accepted under the Instrument of Accession relating to Administration, and that it should further provide that the authority of the Federation should extend to placing at the service of the Crown the means of implementing the Crown's obligations to the States.

Proviso (i), as it stands, may be construed as extending the executive authority of the Federation even to matters in which the States have concurrent powers of legislation, even though no laws may have been passed by the Federation. Turning to the Secretary of State's amendment, it is observable that the words "any conditions or limitations" in the amendment may be held to refer only to conditions and limitations on the acceptance of the items in the Federal List.

The Committee also suggest the deletion of the words in the amendment "by virtue of this section," as such words carry the suggestion that there may be other provisions by virtue of which the executive authority of the Federation extends to Federated States. The Committee therefore propose that the words "by virtue of this section" should be deleted and that at the end of *proviso* (ii) the following words should be inserted :—

> "Nor does the said authority extend in any Federated State to any functions in relation to the administration in a Federated State of a law of the Federal Legislature, being functions the exercise of which is reserved to the Ruler or his officers under an agreement between the Governor-General and the Ruler."

The Committee also wish to emphasise that *proviso* (i) should be re-drafted as already suggested.

Clause 12 (1), *sub-clause* (*a*).—As it stands, clause 12 (1) (*a*) enables the Governor-General in the exercise of his federal functions to act in the manner prescribed for the prevention of any grave menace to the peace or tranquillity of an Indian State. This clause is too wide in language and appears to give a statutory authority for intervention in the internal affairs of Indian States without any insistence or even reference to utilisation of diplomatic action to be initiated by the Viceroy. The Committee feel that this power is too extensive, and that the clause must be amended to obviate all fears of the Head of the Federal Government intervening in the affairs of an Indian State in a manner not contemplated either under the present system or under any of the proposals discussed in England or in India.

Clause 12 (1), *sub-clause* (*g*).—The Committee suggest the addition of the words "and vital interests" after the word "rights."

Clause 45.—The Committee feel that *clause* 45 of the Bill is open to serious objections for the reason that the possible indefinite suspension of the Constitution would also involve the indefinite elimination of the powers and jurisdiction of the States which were delegated to the Federation for a particular purpose which *ex hypothesi* has not been or cannot be carried out. The Committee would suggest a recasting of the clause so as to make it clear that, if for any reason the Constitution is to remain suspended for more than a specified period, the powers granted to the Federation by the various States should revert to the States, so that, if necessary, other and adequate arrangements may be entered into. While the States are willing to accede to the Federation for the purpose of obtaining a Constitution giving responsible Government at the Centre, it is not obviously intended that, if such responsibility has become impossible of attainment, the powers handed over by the Federated States should still be subtracted from them.

Clause 99.—In regard to this clause, the Committee feel that it is essential to secure that a State will not be bound to enforce Federal Laws on matters outside the Instrument of Accession which are applicable in the State only to the extent that they bind British subjects personally. If, for instance, it is intended that a Federal Law applicable to British subjects should be enforced by State Courts where under the Rules of Private International Law it should not be enforced, the Committee most strongly object. *Clause* 99 (2), as at present drafted, in so far as it is not superfluous, is unacceptable.

Clause 127.—The Committee consider that the powers given to the Governor-General by *clause* 127 are so wide and indefinite as to be unacceptable. Under the clause as it stands the Governor-General would have a practically unlimited power of interference in the internal affairs of the States, which appears to the Committee to be hardly consistent with the constitutional scheme as hitherto envisaged. The Committee feel that it is essential that before the States' internal liberty of action outside the federal field is curtailed by outside authority there should be a decision by the Federal Court that the State in question had failed to carry out its federal obligations. Further, *subsection* (1) of the clause as drafted appears to define the federal obligation of the States too widely. To meet these points the Committee ask that *subsection* (2) should be omitted and *subsection* (1) should be redrafted to read as follows: "The executive authority of every Federated State shall be so exercised as not to interfere with the exercise so far as it extends to the State of the executive authority of the Federation."

Clause 145.—The Committee have come to the conclusion that the definition of the term "privilege or immunity" in *clause* 145 (6) is neither accurate nor acceptable to the States as a whole, that some States in particular raise the strongest possible objection to the description, as a privilege or immunity, of the items referred to in *sub-clauses* (*a*) to (*e*), and contend that in most cases these items cannot be defined as concessions, privileges or immunities, many of them having a historical origin and most of them being the result of some specific agreements, compromises or contracts having the character and incidence of reciprocal obligations. The Committee, recognising, however, that these privileges and immunities differ in character from State to State, leave the detailed criticism of particular immunities and privileges to the States specially affected, observing generally that *clauses* 145 (6) *and* (8) are unacceptable.

Clause 147.—The Committee wish to raise the strongest objection to the provisions of *clause* 147 and submit that the principle sought to be embodied in this clause has never been accepted by the States, who are in general disagreement with that principle.

Finance.—The Committee have not been able thoroughly to scrutinise the financial provisions of the Bill, but desire to bring prominently to notice some aspects which are, in their opinion, of great and immediate importance. It will be remembered that a Statement regarding the apportionment and incidence of financial obligations was made on behalf of the States by me before the Joint Select Committee (Question 8023 Minutes of Evidence) and certain basic points in relation to Federal Finance were urged as a condition for the acceptance by the States of the financial scheme. For instance, it was stipulated that at least 50 per cent. of the taxes on incomes should be treated as permanently federal. It is now found that in *clauses* 136 (1) *and* (4) there is no mention of this percentage, but it is left to be prescribed by Order in Council, which Order is both variable and revocable (*vide clause* 286 (2)). The Committee is of opinion that the 50 per cent. minimum should be embodied in the Act.

Under clause 136, the power to impose surcharges on income tax for federal purposes is conferred in general terms without any advertence to the definite undertaking by the Secretary of State that his intention was that this power, subject to an equivalent contribution from the States, was to be confined to occasions of emergency or financial stress. The contention of the States in this matter has been admitted in the Joint Select Committee's Report (page 164) to be reasonable and the Committee, therefore, press very strongly that this matter should not be left indeterminate, but should be specifically provided for in the Statute.

The Committee wish to note that there is nothing in the Bill to prevent a counterpart being demanded in respect of surcharges reproducing those of September 1931.

The Committee realise that the general and fundamental condition of a balanced budget in the case of the Central and Provincial Governments cannot be specifically enacted in the Statute, but they wish to urge with emphasis that the other two conditions precedent to the adhesion of the States to the financial scheme already specified should be so incorporated.

While some States like Kashmir, Bhopal and Indore have definitely declined to accept the liability to pay the corporation tax or an equivalent, the Committee as a whole wish to offer the following criticisms on the provisions of the Bill as they stand in relation to this subject. The Committee have noted the definition of "corporation tax" set out in *clause* 289 (2) and wish to observe that it must be rendered clear beyond misunderstanding that the tax referred to as "corporation tax" is one on the lines of the present super-tax and would therefore suggest the inclusion in the definition of the description in the Indian Income Tax Act of this form of duty. It goes without saying that the States will not desire to accede to the taxation of companies on lines departing

from the present practice, e.g. as specified under *item* 52 *of the List*. Furthermore, the Committee note that the Bill does not provide for the postponement of the levy of the corporation tax until the expiry of 10 years as has been throughout understood. It would be also essential to make it clear that the States' undertakings would not be taken into account in the computation of this tax or its equivalent. The Committee take it for granted that it should be open to any particular State to enter into arrangements for the commutation of the payment of corporation tax by an agreement for the payment of an amount either in lump or periodically in such manner as may be arrived at as a result of negotiations.

Railways.—The Committee feel that in the matter of Railways there has been a departure from what was agreed in the Sub-Committee on Railways (Appendix IV of Joint Select Committee's Report, Vol. I, Part I). The Railway authority to be set up under the Bill is to exercise the executive authority of the Federal Government and is to have jurisdiction even over Indian States (*vide clause* 175 read with *clause* 289). The State Railways are thus placed in subordination of State Railways to a Railway authority which is almost entirely British Indian in outlook, and which will own and control railways of its own in competition with the State Railways (*vide* also *clause* 187 read with *clauses* 122 to 124 and 127, which makes the authority as one constitutionally superior to the Ruler). The States contemplated their own Railway authority to be co-ordinate with the Federal Railway authority and, in consequence, envisaged a tribunal to which, in case of dispute, both parties could resort and which could hold the balance between them, interpreting and shaping the policy of the Federal Government. Under the Bill a dominant authority has been set up, and therefore the Committee feel that they are unable to accept the Railway scheme set up by the Bill.

The Committee desire to reserve the right to further scrutinise and consider the subjects in the Federal Legislative List.

Instrument of Accession.—With regard to the draft Instrument of Accession, the Committee hold that no final opinion could be formulated as to its contents before the States become aware of the final structure of the Bill and before the questions raised by the States to the Federation, especially with reference to *clauses* 6 and 8 of the Bill, are satisfactorily dealt with. The Committee, however, wish very strongly to emphasise that the draft now published does not carry out the intentions underlying the Irwin Report of the 20th December 1932 on the form of States' Instrument of Accession (*vide* Proceedings of the Indian Round Table Conference (Third Session), pages 67–8). In particular, the Committee desire to point out that the Instrument is not in the form of a bilateral agreement between the States and the Crown,

nor does it include any declaration or covenant on the part of His Majesty preserving inviolate the treaties and agreements concluded with the States. The Committee have no hesitation in saying that such a declaration is regarded as of the highest importance, and they do not regard as satisfactory the alternative methods that have now been suggested to secure the same result. It is also absolutely essential that the Instrument should in a Schedule indicate the matters in respect of which the States agree to federate and the reservations, conditions and limitations (e.g. in the matter of administration) subject to which they accede. This would involve appropriate changes in the wording of *clause* 6 and other clauses referring to the document of Accession and in the wording of the amendments proposed by the Committee.

The Committee have been able to examine only some of the most important provisions contained in the earlier part of the Bill and they reserve their comments on other important subjects like the Federal Court, Federal Heads, &c., to a later stage.

Yours sincerely,
A. HYDARI.

To—
The Hon'ble Sir Bertrand Glancy, K.C.I.E., C.S.I.,
Political Secretary to the Government of India.

No. 3.

RESOLUTION PASSED BY A MEETING OF INDIAN PRINCES AND REPRESENTATIVES HELD AT BOMBAY ON THE 25TH FEBRUARY 1935.

The Princes and the representatives of the States present at this meeting have examined the Government of India Bill and the draft Instrument of Accession and read and considered the Report made by the Committee of Ministers presided over by Sir A. Hydari which has recently dealt with some of the important provisions of the said Bill and the draft Instrument of Accession. They have also considered the opinions of legal advisers and experts whose views have been obtained thereon. While reserving to themselves the right to offer further observations and criticisms in due course, the Princes and the representatives of the States present at this meeting fully endorse the observations and criticisms contained in the Report submitted by the Committee of Ministers to the extent that the Committee have been able to deal with the matters in question.

This meeting desires to emphasise that in many respects the Bill and the Instrument of Accession depart from the agreements arrived at during the meetings of representatives of the States with members of His Majesty's Government, and regrets to note that the Bill and the Instrument of Accession do not secure those vital interests and fundamental requisites of the States on which they have throughout laid great emphasis.

This meeting is of the definite opinion that in their present form, and without satisfactory modification and alteration on fundamental points, the Bill and Instrument of Accession cannot be regarded as acceptable to Indian States.

No. 4.

LETTER TO HIS EXCELLENCY THE VICEROY FROM HIS HIGHNESS THE MAHARAJA OF PATIALA, HIS HIGHNESS THE NAWAB OF BHOPAL, AND HIS HIGHNESS THE MAHARAJA OF BIKANER.

(Communicated by Telegram.)

Your Excellency, Bombay, 27th February, 1935.

The Chancellor has already communicated to Your Excellency the resolution unanimously passed by the meeting of the Princes and representatives of States held at Bombay. His Highness and we now take the earliest opportunity of sending you criticisms of certain fundamental proposals of the Government of India Bill and draft Instrument of Accession.

While forwarding these views we should like at the very outset to point out that it is only now, after publication of the Bill, that we have been able, during the brief time at our disposal, to examine the scheme. We have considered the provisions of the Bill and Instrument of Accession and feel that various resolutions of the Chamber of Princes and informal meetings of the Princes, held from time to time, have not so far received that attention of His Majesty's Government which they deserved. We press strongly that to achieve satisfactory results this representation and others that may follow from us and from the Ministers' Committee may be given due weight and full consideration. We would, therefore, request Your Excellency to be so kind as to forward to His Majesty's Government in full the suggestions contained in this joint letter, which should form the basis of further negotiations in this connection. We should like to emphasise that the points contained in this letter are true reproductions of the gist of the opinions held by the Princes' meeting at Bombay and they should be treated as such by the Government of India and His Majesty's Government. We feel that unless and until we secure the full agreement of His Majesty's Government to the points herein raised, it will be difficult, for a very large number of the Princes at any rate, to accept the Federation scheme. Most of the points mentioned in our letter are of a fundamental character, and the success of further negotiations between His Majesty's Government and the Princes in relation to the scheme of Federation will, we believe, entirely depend on the extent to which His Majesty's Government will be prepared to accept the proposals of the States contained herein.

We should like to make it clear beyond doubt that there has never been any intention on our part to resile from the position we have all along taken. It has throughout been our contention, and we have never departed from the position, that acceptance of the federal scheme by us will depend entirely upon the inclusion in the scheme of reforms of certain fundamental conditions and essential safeguards which we consider necessary for the unimpaired

continuation of our sovereignty and autonomy within our States. The scheme before us has failed in many instances to satisfy us in that respect, and we have wasted no time in informing His Majesty's Government through Your Excellency of the view we take of the situation.

We are confident that our action will not lead to any misunderstanding. It is, in our opinion, still not beyond the sphere of statesmanship to adjust our differences in such a manner as would lead to a satisfactory and desired result.

We record in a separate note, attached herewith, as briefly as possible our criticism in so far as it has been possible for us to examine the proposals of His Majesty's Government regarding the federal scheme as placed before us in the form of the Government of India Bill and draft Instrument of Accession.

Yours very sincerely,
BHUPINDAR SINGH.
HAMIDULLA H.
GANGA SINGH.

No. 5.

NOTE.

The special conference of Princes and Ministers, held at Bombay during this week, have unanimously recorded their definite opinion that in their present form, and without satisfactory modifications and alterations with regard to fundamental points, the provisions of the Constitution Bill and Instrument of Accession cannot be accepted by the Indian States. It is necessary once again to convey to His Majesty's Government those modifications and alterations, which would obviously include also additions and supply of omissions, which the Princes have been regarding from the very outset to be vital and fundamental in this connection.

2. It has been all along understood, and had been so agreed at the meeting of the Committee appointed under the presidency of Lord Halifax at the Third Round Table Conference, that the Federation would derive its powers in part from powers which "Rulers of States would agree, for the purpose of the Federation only, to transfer to His Majesty the King for exercise by the Federal Government and Legislature and other federal organs. In order to effect the transfer of these powers, an agreement would require to be made by each State individually with the Crown, which might be termed an Instrument of Accession." These instruments, which are further described in the proceedings of the conference to be Treaties, were intended to be mutual agreements "necessarily bilateral in effect, since they were meant to provide also for their acceptance by the Crown upon the terms and subject to the conditions expressed therein." These Treaties of Accession, as we want them to be designated, were meant to be governed by the ordinary principles of

contract and were to be construed in accordance with the generally recognised rules of constitutional law.

The Princes have never agreed to accept any Act of the British Parliament as binding on them, and no Prince will, as contemplated by clause 6 (*a*) of the proposed Bill, declare "that he accepts this Act as applicable to his State and to his subjects." It was only to avoid a verbatim reproduction in the Treaties of Accession themselves of the wording of each clause of the Act which related directly or indirectly to the States, that any reference to the Act was thought permissible in the Treaty of Accession. The procedure regarding the Treaty of Accession that commended itself to Lord Halifax's Committee was to execute an agreement "whereby the States would convey to the Crown a transfer of the necessary powers and jurisdiction in accordance with the specific provisions of the Act. This procedure would enable, respectively, the Governor-General of the Federation and other federal organs, established for the purpose of carrying out the Constitution, to exercise in relation to the States and the subjects of their Rulers, but only in accordance with the Constitution, the powers which the Rulers had agreed to transfer." It is obvious that this conformity to the Constitution was suggested, in order to avoid the reproduction of the wording of each clause in the Act relating to the States in the document, only as a labour-saving device. The Princes have all along looked upon these Treaties of Accession as the really operative instruments binding them to the Federal constitution, and not the Constitution Act, which, as an Act of Parliament, they cannot be expected to accept as binding on them or as applicable to their States and their subjects. With regard to the Indian States, the structure of the Bill has to be in conformity with the provisions of their Treaties of Accession, not that their Treaties of Accession should be in keeping with the provisions of the Constitution Act. We are also of opinion that it is imperatively necessary to provide specifically in the Constitution Act that no provision of the Act shall be deemed to override any provision of the Treaty of Accession, and that in case of conflict the Treaty of Accession shall prevail.

3. Lord Halifax's Committee considered it desirable that the draft of this Treaty of Accession should be discussed between the Viceroy and the representatives of the States. It was suggested that "opportunity might be found to enable the Princes' views on the draft Constitution to be made known to Parliament while legislation was in progress"; and "possibly again at a later stage (*e.g.*, during the Report stage) if important amendments were introduced in the scheme after its discussion in the Joint Committee where the States would be represented and the introduction of a Bill in Parliament." The Princes seek this opportunity to press their views on the essential and fundamental points they have urged from the outset, now that a Bill has been already introduced in Parliament and which they apprehend in its present form has altered and omitted

several important points from the recommendations of the Joint Select Committee. As observed by our Ministers, " the Bill departs in several important respects from the agreed position arrived at during the meetings of the States' representatives with His Majesty's Government " and with the members of the Joint Select Committee. The Bill has also embodied certain new features which raise issues of a grave and momentous character that have not hitherto been discussed with the Princes or their representatives. A separate note is appended dealing with matters which had been mutually and finally settled in regard to which the agreement arrived at has not been incorporated in the Bill.

4. These Treaties of Accession were intended to be bilateral in character, creating rights and imposing reciprocal obligations both on the Rulers of the Indian States and on the Crown. If the Rulers delegated certain portions of their sovereignty and internal jurisdiction to the Crown, they also expected that the Crown would accept liability to preserve and safeguard the whole of their sovereignty and internal autonomy not specifically thereby safeguarded from any encroachment in future. The procedure now embodied in the Government of India Bill is only for a declaration by the Indian Ruler " that he accepts this Act as applicable to his State." His Majesty has only to signify his assent to this declaration, which does not commit him to any further obligation to safeguard the remaining power and jurisdiction of the Ruler within his State and over his subjects. This position is far from what has been understood by the Princes all throughout.

5. Moreover, the Treaty of Accession was to provide for the transfer of certain powers and jurisdiction of the Indian States " *for the purposes of the Federation only,*" in order that those powers so delegated may be exercised by the new Federal Government and its several federal organs. A situation as contemplated by clause 45 of the Bill had never been discussed with us and conceded. If there was a breakdown of the Constitution, it was never contemplated that the powers so transferred by the States were to be exercised by the Governor-General for an indefinite length of time. If the breakdown was not repaired and the machinery of government restored to its normal structure within a certain definite time, the powers transferred by the States must revert to the Princes owing to the failure of the Federation—the sole object of transfer. Furthermore, it must be observed that these powers were being made over to the Crown as a trustee for their delegation to the Federation, to be jointly exercised by British India and Indian States. It was thus understood that, in the event of a breakdown of the Federal Constitution or an amendment without the consent of the States, beyond such minor changes in respect of which previous consultation may not be necessary by agreement, the trust would be determined and the powers transferred would revert to the States. It need hardly be added that when such a reversion has occurred, the existing relations

between the Crown and the States would be again revived. The Princes therefore urge that this aspect of the delegation of powers should be fully recognised in the provisions of the Constitution Act.

6. Clause 99 purports to deal with the legislative powers of the Federal Legislature. It is true that with respect to a matter included in the Federal list of subjects which has been accepted by a Ruler by his Treaty of Accession as a matter with respect to which the Federal Legislature may make laws, the law enacted by the Federal Legislature will apply to that State and to its subjects; but the States desire that the structure of the Bill should follow the lines of the White Paper sketched in proposals 111 and 117; there is really no exclusive list for the Federal Legislature with respect to the Indian States. The Indian States will retain intact their power of concurrent legislation, even on matters accepted by Rulers to be federal, provided there is no repugnancy between their State laws and federal law. Section 99 need not empower the Federal Legislature to enact a law for any one Federated State. If such an occasion arose, the Ruler of that State may be requested to enact such a law.

7. With regard to administration, however, the provisions made by the Bill are not satisfactory. Clauses 122, 123, 124 and 127 leave much room for improvement. The language of clause 127 is not at all happy. "The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation." If what was enjoined had been only confined to interference with the executive authority in matters which the State had accepted as federal, one could have understood that what was intended was only interference and unfair and undesirable competition with the executive administration of the federal authorities, which might affect prejudicially the revenues of the Federation; but the executive authority of the Federation cannot be sacrosanct even in non-federal matters. There may be competitive or even conflicting interests in the economic or material field, and the interests of the State cannot always be fairly subordinated or made to suffer when in conflict with the interests of the Federal Government.

8. Moreover, the power of issuing instructions and directions to the Ruler, as the Governor-General may deem fit in his discretion, to maintain a system of administration adequate for the purposes of that Act is very vague and is apt to be used in an arbitrary manner. Accepting the suggestion of the Joint Select Committee with regard to the Federal Court, clause 201 has provided that the Federal Court, if it requires the aid of the civil or judicial authorities in a Federated State, shall cause a *letter of request* in that behalf to be sent to the Ruler of that State. Cannot a similar *letter of request* be also sent to the Ruler whose system of administration may be inadequate for the federal objects in view? If diplomatic action or friendly persuasion has been known till now to have achieved its end, there is little justification to substitute in their place the sending of

directions and instructions for the improvement of the administration of a State, even in a department dealing with a non-federal subject, simply because the exercise of the executive authority of the Federation is felt to be impeded or prejudicially affected.

The States naturally apprehend that, under cover of this authority, the Federal executive may shortly call on the States to abandon their policy of levying customs or import duties on their land frontiers, simply in order to improve the trade prospects of their capital or of other federal territories. Finally, if such instructions are to be sent at all, they could proceed with greater propriety from the Representative of the Crown than from the Governor-General at his discretion. It should also be specifically provided in the Act that the powers conferred on the Governor-General or the Crown's Representative should not be exercised to the prejudice of the treaty rights of the States. Clause 123, sub-clause (3), is not necessary. No Act of the Federal Legislature need confer powers or impose duties directly upon the officers or authorities of a Federated State. Such powers can only emanate from, or be conferred, and duties imposed by, the Ruler of that State, who would do it according to the Act which he has accepted to be federal for his State. Clause 124, while empowering the Governor-General to satisfy himself that the administration of the Federal law is being properly carried out by a State by inspection, also seeks to give him undefined and indefinite powers by using the term "inspection or otherwise." This vagueness is not satisfactory and is liable to be abused. The words "or otherwise" should be deleted.

9. The Princes have been naturally very anxious to secure recognition of the sanctity of their treaties in the new Constitution. They have been advised by His Majesty's Government not to press the point. Their treaties are said to be with the Crown, and the new Constitution Act is said to be not the proper place for any such provision safeguarding the treaties of the States as inviolate and inviolable. They are told that any mention of the treaties in the Constitution Act would bring them within the purview and jurisdiction of the Federal Court to analyse and interpret them—which may not be always to the advantage of the States. If, however, clause 110 has been deemed necessary to save "the sovereignty, dominion or suzerainty of the Crown in any part of India" from the jurisdiction of the Federal and Provincial Legislatures, it is not quite clear why more apprehension need be entertained for the correlative treaties between the Crown and Indian Rulers, believed to be under the suzerainty of Crown, so as to exclude them from this saving clause. Moreover, the present Government of India Act of 1919 by section 132 enacts that "all treaties made by the East India Company, so far as they are in force at the commencement of this Act, are binding on His Majesty." This Act of 1919 is to be repealed by the new Constitution Act, and unless some such clause is again reproduced in new Constitution the legal effect of such omission,

likely to be adjudicated by the Courts, is that the treaties are no longer binding on His Majesty. The mere fact that our treaties are with the Crown is no safeguard for their sanctity if, after the repeal of the Government of India Act of 1919, a provision similar to that in the Act of 1858 is not repeated in the new Constitution.

10. The Princes have asked for a revival of the corresponding clause in the Government of India Acts of an older date compared to the Government of India Act of 1919, as the words "so far as they are in force at the commencement of this Act," which had been inserted only in the Act of 1915, have had disastrous effects on their treaties. Amendments and alterations made with mutual consent and the free volition of both parties no doubt may supplant and take the place of old treaties. As *novatio*, the altered treaties are equally binding; but there ought to be no room for any continuous erosive action hereafter from usage, sufferance, acquiescence, political practice or ultimate powers of paramountcy so as to undermine the essence and substance from below of these sacred treaties. The use of these vague words in clause 2 of the Bill is deprecated and suggested to be dropped.

11. The Chamber of Princes have from the very outset urged a satisfactory settlement of the claims of paramountcy to be a condition precedent to the accession of the States to any Federation. Among the essential conditions they had laid down from time to time, the one treating with a definition of paramountcy has been made a *sine qua non* to any Federation. They have consistently asked that "the sovereignty and autonomy of their States shall be fully respected and guaranteed, and there shall be no interference, direct or indirect, with the internal autonomy of their States." It is regretted that no effective steps have been taken, so far, to reach a settlement of the question of paramountcy, which has justly been considered by the Princes to be one of vital importance. It is true that, as stated by the Secretary of State in his recent pronouncement, the Princes had never desired the inclusion of the question of paramountcy in the Constitution Act, but this does not mean that they have not repeatedly emphasised that its settlement is a condition precedent to their entry into Federation.

12. A cursory glance at only one or two of the special responsibilities imposed in the Bill on the Governor-General would illustrate the measure of sanctity allowed in the Bill to this much valued sovereignty and internal autonomy. Clause 12, enumerating these special responsibilities, by sub-clause (*a*) vests the Governor-General with absolute authority to prevent "any grave menace to the peace or tranquillity of India or any part thereof." An Indian State, troubled by internal commotion or communal tension, may be taking every step necessary to prevent trouble from growing and menacing its internal peace or from disturbing the tranquillity of an adjoining Province; and yet in the name of a grave menace to the

tranquillity of the country, the Governor-General can in his discretion interfere with the autonomy of the State and set aside its police and judiciary in defiance of the reserved provisions of their treaties, and the Bill has not provided the State with any mode of seeking redress against any arbitrary exercise of this indefinite power.

13. Sub-clause (*g*) charges the Governor-General with the special responsibility of protecting the rights of any Indian State, to which it has been also proposed to add the "vital interests" of the State as well. There is, however, no machinery to adjudicate whether a particular right claimed by any State and sought to be protected is such a legitimate right of the State or not. The ruler of the State may be relying on his ancient treaty in support of what he alleges or claims to be his right; and yet the treaty may be liable to be looked on as being defunct and having lost its force through desuetude or sufferance. No resort to a Federal Court or reference to an *ad hoc* tribunal by way of right has been allowed or deemed expedient. Paramountcy, it is said, *ex vi termini*, must remain indefinite and indeterminate!

14. Clause 130 deals with disputes regarding water rights, allowing reference to an *ad hoc* tribunal of any complaints made by a Ruler; but reference is only permissive and may be allowed "unless the Governor-General is of opinion that no action should be taken." The stronghold of paramountcy has accordingly been kept impregnable. The Princes fear that it will go on getting reinforced with the progress of time by newfangled theories of acquiescence, disuse and case law with all its ancillary powers. The highest courts of justice in the Dominions have held that "no Federal authority can, consistently with its paramountcy in the sphere of legislation, irrevocably divest itself of its administrative authority." Clause 8 of the Bill lends colour to this misgiving when it broadly lays down that "the executive authority of Federation extends (*a*) to matters with respect to which the Federal Legislature has power to make laws." Reservations made and authority saved in the Instrument of Accession are likely to be brushed aside under the authority of judicial decisions. There have been decisions of Federal Courts which have held that treaties made by the Crown with States that have not any status in international law are not treaties, but matters of only domestic concern to that particular country. The Princes emphatically urge that they would not enter a Federation where such extension of authority is possible and remains unprovided for.

15. The documents of 1818, by which several States parted with their external and foreign relations in consideration of their being adequately protected from both foreign aggression and internal upheaval, were regarded as treaties of mutual friendship, amity and alliance. The proposed documents of 1935, by which the States are

asked further to transfer some of their internal sovereignty as well to His Majesty the King as a result of proposals regarding Federation discussed between representatives of His Majesty's Government, of British India and of the "Rulers of Indian States under the suzerainty of His Majesty," are only to be Treaties of Accession. The Princes are asked to execute and sign these Instruments of Accession without regard to the derogation of their position from allies and absolute rulers in their own territories to rulers under the suzerainty of the other party to the alliance. This undermining process is to be kept up and strengthened under the force of judge-made laws and new political theories, while reinforcing the claims of paramountcy by the same device. It is very natural that the Princes should have serious objections to this process of gradual decline in their political status. The Princes had only agreed to federate in the interest of the Empire.

16. It has been also urged from the outset that in the constitution of the future Federation there should be absolute equality between the several units of the Federation; no one unit and no British Indian Province holding any superiority as compared to an Indian State. This immunity from discrimination has not been extended to the Indian States in several matters. Disability in the matter of trials of European offenders may be cited as one illustration of this discrimination against the States' courts. In the matter of railways also the Indian States are being asked to waive their jurisdiction over lands ceded only for construction of railways, and though retrocession of such jurisdiction is being demanded during the last 15 years, the claim has not yet been met. There is no reason why the Courts in a British Indian Province should exercise such jurisdiction in the territories of Indian States simply because they are traversed by a railway. This cession of jurisdiction over railway lands, lest it becomes perpetual and under clause 169 of Bill is claimed by way of succession by future Federal or Provincial Governments, should be retroceded without further delay.

17. It has also been urged that no unfriendly act by one unit against another unit of the Federation should be possible. A policy affording a sort of sanctuary to calumniators and vile defamers of Indian Rulers in the public Press in British India is liable to be deemed as affording such unfriendly shelter. Similarly, no privilege of Legislative Chambers ought to be allowed to serve as a shield for gross defamation and personal remarks against the Indian Rulers and members of their families during the debates in such assemblies. Clauses 28 and 71 stand in need of suitable safeguards being embodied therein. In sub-clause (*g*) of clause 12 dealing with the special responsibilities of the Governor-General, protection should be extended not only to the vital and legitimate interests of the Indian States but also to the privileges and dignity of the Rulers. They should continue to enjoy the recognised privileges of sovereign Rulers.

18. The chapter on Federal finance (Part VII, Chapter I) leaves considerable room for elucidation and alteration. The Princes have, for instance, from the very outset set their face against any direct tax, and have only agreed to be subjected to certain modes of indirect taxation as their contribution to the Federal fisc. Section 136, however, places the Federated States on a par with the British Indian Provinces in the matter of taxes on income, which are made refundable to such States as agree to a system of income tax at the end of 10 or more years in the same way as it may be refundable to a British Province. This is, no doubt, an enabling clause and only affects such States as agree to contribute their income tax to Federal authority. The same option is, however, understood to exist in the case of corporation tax, and yet, while there is no similar provision made about a State's liability to pay a corporation tax, clause 136 admits the possibility of a State agreeing to pay a direct tax like income tax to the Federal fisc. This clause is liable to misunderstanding and abuse and should be accordingly altered.

19. As pointed out in the Ministers' Report, there have been many omissions in the Bill of several salutary clauses that had been specially recommended in the Report of the Joint Select Committee as just and equitable in the interests of the Indian States. Thus, while the Report of the Committee had fixed the percentage of income tax to be permanently retained in the hands of the Federal Government at a minimum of 50 per cent., this wholesome limit is mentioned nowhere in the Bill. In the interests of stable finance, the Indian States require to be assured that the annual budget of the Federal Government would be mostly well balanced in normal years; and for that purpose this fund of 50 per cent. of income tax should be permanently annexed to the Federal fisc and not left exposed to importunate demands of the Provinces. Similarly, the Joint Select Committee had removed the limit of 10 years as the maximum period for which the federal authorities could retain their hold on the income tax contributions from the Provinces; the precarious nature of the budgets both in the Provinces and at the Centre, which may have to go on helping deficit Provinces, might necessitate retention of the entire proceeds of income tax in the hands of the Federal Government for a much longer period; and yet no such provision has been made in the Bill.

20. The principle of asking the Indian States to pay up cash contributions to the Federal fisc in times of financial stress cannot be received favourably by the Indian States. The Bill ought to make clear distinction between ordinary financial stress and emergencies like wars or years of continuous and chronic financial deficits. To meet the former occasion no State ought to be called on to pay any surcharge or surplus taxes or cash contributions of any kind. Such occasions of stress ought to be bridged over by temporary adjustments and stringent retrenchment of expenditure. The Bill ought to provide for a definition of a real emergency on the line that

was put forward on behalf of the States' Delegation, and which was considered by the Joint Select Committee as not unreasonable. It was urged by the States' Delegation that "if at any time even during the period of the first 10 years the financial position becomes such that the Federal expenditure cannot be met from the sources of revenues permissible to the Federal Government after all possible economies had been effected and the sources of indirect taxation open to the Federation exhausted, and the return of income tax to the Provinces suspended, a state of emergency will be held to have come into being, when all Federal units will make contributions to the federal fisc on an equitable and prescribed basis." It is only during such a grave emergency that cash contributions by the Indian States may be at all regarded as called for. The States would prefer to have such cash contributions left to the free volition of the States. Such voluntary aid from Indian Rulers has not failed in the past during wars and other occasions of service to the Empire. If, however, such voluntary contributions are held to be insufficient for the safety of financial forecasts, the Princes would prefer enhancement in the incidence of permissible taxes, as, for instance, excise duties on articles like sugar, matches and tobacco, and other commodities manufactured in the country, to be ear-marked for meeting occasions of grave financial stress. The States had agreed to excises on tobacco and matches as Federal sources of revenue permissible in severe emergencies. No provision has been made in the Bill in regard to them as such.

21. Clauses 145 and 147 of the Bill, dealing with so-called immunities and privileges, are not regarded by the States as at all fair or equitable. Many of the financial advantages now enjoyed by the States are not at all gratuitous benefits or immunities; they arise under agreements, and have been paid for and purchased for value. Moreover, if any surplus revenue from excise is to be refunded to the States, there is absolutely no justification for any set-off as claimed by clause 147 of the Bill. If surplus taxation is refunded, it surely ought to benefit the people on whom the incidence of tax mainly falls; there is no reason to have it set off against the so-called and fancied immunities, which have a peculiar historical origin and justification of their own and cannot be so unfairly withdrawn.

22. While dealing with cash contributions, payment of tribute, and ceded territories, the Bill has entirely lost sight of yet another kind of contribution the States have been making towards Federal finance, which deserves proper recognition. The Federal Finance Committee at the Round Table Conferences had enumerated the "contributions in kind made for defence by the maintenance of State Forces." These States forces have now been embodied in the Indian Army as distinct units, ear-marked for service abroad as well as for internal security, and if they are maintained at State expense, their annual charges ought to be distinctly recognised as

contributions made by the States towards the Federal fisc and allowances made for them.

23. The subjects of defence and foreign relations, which are really Crown subjects, are regarded in the Bill as Federal reserved subjects. The States have, however, every right to expect that when the time arrives for transferring them to the Federal Government, the States would be fully consulted and adequate measures taken to have their own rights and privileges taken into consideration. Until that time has arrived, however, the States desire that, so far as they are concerned, the existing arrangements should continue and no further obligations on account of foreign relations should be undertaken without their previous consent.

24. On the subject of railways there is not much to add to what the Ministers have already urged about the Statutory Federal Railway Authority. The States had agreed to regard as Federal the items of maximum and minimum rates, and interchangeability of traffic, terminals and safety; they did not, however, agree to have the final authority in these matters transferred to a railway authority, which would be managing only a competitive railway system of its own. The States could hope to shape the policy of the Federal Government on these points which they agree to regard as Federal; they could not agree to subordinate the interests of their own railways to the dictates of another railway authority on which they had no standing. The Statutory Railway Authority can only be one co-ordinate with and not superior to their own Railway Board, both being subject to the control of the Federal Government. As regards the points agreed on to be Federal, the Federal railway tribunal ought also to be one available to both sides, and not one to which the railway authorities of the States had always to take recourse, like a plaintiff, with the burden of proof placed on their shoulders.

25. The Princes endorse the remarks contained in the letter addressed by their Ministers to Sir B. Glancy, dated 22nd February, 1935, which they do not think it worth while repeating. There are several other details on which they have to offer suggestions for amendment, which they cannot fully deal with here within the short time at their disposal. They reserve their liberty to enlarge on these points and others which may occur to them hereafter.

26. It is pointed out that there is also the question of outstanding claims of the States which require settlement before the States can accede to the Federation, and it need not be stressed that effective measures should be promptly taken to settle these claims.

27. In conclusion, it should be well to remember that the Princes had originally accepted the invitation to federate out of their anxious desire to be of service to the Empire. The structure of the Treaty of Accession as well as the Constitution Bill ought to

be well in keeping with the spirit that had induced the States to accept the federal scheme.

Subsidiary list of amendments suggested to the Constitution Bill :—

1. Clause 26 (4) (*b*).—It would look more proper and cause greater satisfaction and goodwill if the same disability applied to lent officers under the States. The officers whose services have been lent to the States still hold positions of profit under the Crown in respect of their pensions. The States representatives should not have the appearance of an official *bloc*.

2. Clauses 119 and 279.—The benefit of these clauses should be extended to subjects of Indian States.

3. Clause 132.—There is no valid reason to deprive the party dissatisfied with the opinion of the tribunal of his right to appeal to the Privy Council. He may not have elected to entrust his case to an *ad hoc* judicial tribunal.

4. Clause 151.—Reciprocity demands that States' properties, like Government securities, should be exempted from income tax and other forms of taxation.

5. Clause 169.—Retrocession of jurisdiction over railway lands should precede accession to the Federation, and prevent the descent by way of succession of such jurisdiction from the Governor-General in Council to the Federal Government.

6. Schedule 1, Part 2.—There ought to be no power to change the proposed allocation of seats without some well-defined cause like increase in population or increase in salute of guns.

List of a few points in relation to which the Constitution Bill has gone back compared to the White Paper or Report of the Joint Select Committee :—

1. Section 6.—Instrument of Accession. The Committee under Lord Halifax had intended this document as an agreement. An agreement is bilateral in form and creates reciprocal rights and obligations. It is now to be only a declaration by the Princes that they accept the Act as applicable to their States and their subjects.

2. The transfer of powers from Indian Rulers was intended to be for Federation purposes only. This limited character of the transfer is not brought out in the draft of the Instrument of Accession.

3. The description of Rulers with whom former treaties of alliance and perpetual friendship had been entered into as only under the suzerainty of His Majesty the King.

4. In matter of administration the Princes are asked by clause 124 to execute an agreement that they would efficiently administer a subject-matter with regard to which they had agreed that the Federal Legislature could make laws. Instead of letters of request being sent through the Representative of the King, the Governor-

General was to be authorised, in his discretion, under clause 127, to issue directions that they should make the standard of their States' administration—even in regard to non-federal departments—adequate for the purpose.

5. Sanctity of the existing treaties not explicitly safeguarded even in the proposed Instrument of Accession.

6. Eligibility of Indian State subjects for appointment to posts under Crown recommended in paragraph 367 of Joint Select Committee's Report not reproduced in the Bill.

7. Finance.—Maximum limit of refund of income tax to British Indian Princes, which was fixed at 50 per cent. by the Joint Select Committee, is abandoned in the Bill.

8. Joint Select Committee had removed the fixing of a time limit within which portion of income tax revenues refundable to Provinces had to be returned to Provinces. There is no provision in the Bill for extending time limit.

9. A financial emergency as proposed to be defined by the States' Delegation, when alone a surcharge on income tax on capital or income of companies was permissible, which was considered not unreasonable by the Joint Select Committee, is not reproduced in the Bill.

10. As to any future refund of excise duty or surplus taxes to the States, there had never been any proposal to set off immunities or privileges as now proposed by clause 147.

11. A Federal railway authority managing Federal railways would also be the controlling authority over the Indian State Railway Board. This had never been intended. The Federal railway authority was only to be a co-ordinate body and cannot control the working of a competitive system of railways in Indian States.

12. The Railway Tribunal was intended to be an impartial Board of Arbitration for both parties. In the Bill it has become a court for the States Railways to pray for relief like plaintiffs with the invariable onus of proof on their shoulders.

No. 6.

DESPATCH (TELEGRAPHIC) FROM THE SECRETARY OF STATE FOR INDIA TO THE GOVERNMENT OF INDIA, DATED 14TH MARCH, 1935.

My Lord,

I HAVE received from Your Excellency's Government

(1) on 1st March, 1935, a copy of a letter from Sir Akbar Hydari to Sir Bertrand Glancy, dated 21st February, communicating the results of the deliberations of the Committee of States' Ministers on the Government of India Bill (a telegraphic summary of which was received by me on 22nd February, 1935);

(2) on 26th February the resolution passed by a meeting of the States' Rulers and representatives held at Bombay to consider the Report of their Ministers' Committee, in which they state their view that "in many respects the Bill and the Instrument of Accession depart from the agreements arrived at during the meetings of representatives of the States with Members of His Majesty's Government"; and that they regret to note that "the Bill and the Instrument of Accession do not secure those vital interests and fundamental requisites of the States on which they have throughout laid great emphasis"; they add that "in their present form, and without satisfactory modification and alteration on fundamental points, the Bill and Instrument of Accession cannot be regarded as acceptable to Indian States";

(3) on 5th March a letter dated 27th February from Their Highnesses the Maharaja of Patiala, the Nawab of Bhopal and the Maharaja of Bikaner with an accompanying Note which they asked Your Excellency's Government and His Majesty's Government to consider as a true reproduction of the gist of opinions held by the Princes' meeting at Bombay.

There have appeared in the Press accounts of speeches made at that meeting, and I understand that they have now been transmitted to Your Excellency. I assume, however, that the above-mentioned documents are those which the Rulers desire Your Excellency's Government, His Majesty's Government and Parliament to take into account.

2. I welcome the assurances contained in Their Highnesses' letter of 27th February regarding their motives in addressing you, and their declaration that there is no intention on their part to resile from the position which they had previously taken. The substance of the proposals regarding Federation has been before the States since the publication of the White Paper in March 1933, and many of the details were examined in the course of the proceedings of the Joint Select Committee, which had the assistance of delegates representing the States. The recommendations of the Committee made no material change in the proposals

so far as concerns the States, and the Bill was drafted with the intention of giving effect as closely as practicable to the recommendations of the Committee. In only two points of secondary importance (to which reference is made in the attached Memorandum, clauses 147 and 279) is there any departure from the scheme as presented in their Report. His Majesty's Government regret that the exigencies of Parliamentary business did not permit of any considerable delay between the publication of the Bill and its consideration by Parliament, and this has no doubt curtailed the opportunity, which a period of delay might have afforded, for discussion with Rulers or their representatives on points which arose in the course of their examination of the Bill. I can readily understand that the latter circumstance accounts for some of the difficulties which have occurred in apprehending the full purport and intention of the form of drafting adopted in some of the clauses of the Bill. Yet since Their Highnesses have expressed the view that the Bill differs in important respects from the scheme hitherto discussed, and that the method adopted for the establishment of the Federation is such as to constitute an encroachment on the rights of the States outside the Federal sphere, I must state in the plainest terms that there was no such intention in the minds of His Majesty's Government. In order that any misunderstanding on this point may be removed at the earliest opportunity, I enclose a Memorandum examining in detail the specific points raised in relation to the Bill and the Instrument of Accession. I hope that Your Excellency's Government will take steps with the least possible delay to place this despatch and the enclosed Memorandum in possession of the States.

3. It is, however, advisable that I should add here a further observation. At the moment, the only matter in issue is the terms of the Bill constituting the scheme of Federation. His Majesty's Government are prepared to give careful consideration to any views expressed by the Rulers regarding the form of the Bill and to recommend to Parliament any modifications which will, consistently with the preservation of its essential provisions, meet any legitimate difficulties which have arisen from its consideration by them. But it is not the intention of His Majesty's Government at this stage to seek from them any undertaking to enter Federation, or to discuss now matters which have no bearing on the form of the Bill.

4. There is, however, one such matter which occupies so prominent a position in the Note of 27th February that I must deal with it here. In that Note Their Highnesses put forward a request that various claims advanced from time to time by the Princes in relation to the exercise of Paramountcy should be settled as a condition precedent to the accession of States to the Federation. The greater part of the field of Paramountcy is untouched by the Bill. The Bill contemplates that certain

matters which had previously been determined between the States and the Paramount Power will in future be regulated, to the extent that States accede to the Federation, by the legislative and executive authority of the Federation. But in other respects (and in all respects as regards non-federating States) Paramountcy will be essentially unaffected by the Bill. I desire at once to make it plain that, although His Majesty's Government recognise the advantage of further clarifying the practice governing the exercise of Paramountcy, such issues cannot be determined by the consideration whether States do or do not federate; still less can the settlement of any outstanding claims of individual States referred to in paragraph 26 of the Note accompanying Their Highnesses' letter of 27th February be based on any such consideration.

5. In paragraph 15 of the same Note and at item 3 of the last list attached to it Their Highnesses have called attention to the manner in which individual Rulers have entered into relations with the Crown, and the matter is also alluded to in paragraph 9 of the Note. I cannot believe that Their Highnesses, in expressing their views on this matter, had any intention of questioning the nature of their relationship to the King Emperor. This is a matter which admits of no dispute.

6. The accompanying Memorandum, while designed to remove any such misunderstanding as that to which I have referred in paragraph 2 of this despatch, contains also a note on each clause to which reference has been made in Their Highnesses' letter of 26th February and in the Report of the Committee of Ministers. It will, I hope, suffice to meet many of the difficulties to which they have given expression, and materially to narrow the field of difference. I am glad that Their Highnesses have now arranged that their lawyers should meet the Parliamentary draftsmen in order to explore those points which arise from the form of drafting adopted. This will further facilitate the discussion and disposal of any points which may remain at issue: and I associate myself with the expression of Their Highnesses' confidence that the difficulties which they have felt in regard to the form of the Bill can be satisfactorily adjusted.

7. I am arranging to present these documents to Parliament and shall be glad if you will arrange for publication in India.

I have, &c.

SAMUEL HOARE.

No. 7.

MEMORANDUM.

Clause 2.

(i) It is suggested at paragraph 10 of the Note, and in the Ministers' report, that the words "by treaty grant usage sufferance or otherwise" should be omitted from clause 2, page 1, lines 14 and 15. These words are descriptive and have in themselves no operative effect. But, while His Majesty's Government have no objection to their omission, since the essential purport of the clause would not be altered, they must make it clear that they do not thereby accept the claim, which appears to be implied in paragraph 10 of the Note above referred to, that the Crown's present relations with the States have a purely contractual basis.

(ii) It is further suggested that on page 1, lines 18 and 19, the words "or as may be otherwise directed by His Majesty" should be omitted. The omission of these words would have the result of depriving His Majesty of the right to delegate certain prerogative powers, *e.g.*, the grant of honours or the exercise of the prerogative of pardon, and for that reason the amendment could not be accepted in the form suggested. It is understood, however, that the object of the suggestion is to avoid the theoretical possibility that His Majesty might delegate part of the powers of the Crown in relation to what is usually known as the paramountcy field to some authority other than His Majesty's Representative for whose appointment provision is made in Clause 3, (2) and (3), of the Bill. It is not intended that special powers in relation to the States should, if not exercised by His Majesty himself, be delegated to any other authority than the Viceroy as the Crown's representative, and an amendment to make this plain will be considered.

Clause 6.

(i) In the report of the Ministers it is claimed that accession should be by acceptance of specified provisions of the Act, not by acceptance of the Act as a whole with such limitations and conditions as may be made in the Instrument of Accession. This position is further enlarged in paragraphs 2, 4 and 14 of the Note to Their Highnesses' letter, where it is claimed that the Instruments of Accession (which should in their view be described as Treaties of Accession) are the only operative instruments; that the Act should be in conformity with the Treaties of Accession, not that the Treaties should be in conformity with the Act, which would in case of conflict be overridden by them; and further that the Treaties should be regarded as bilateral in character creating a reciprocal obligation on the part of the Crown "to safeguard the remaining power and jurisdiction of the Ruler within his State and over his subjects."

(ii) It is necessary therefore to state the grounds on which clause 6 has been given its present form, for these will, in the opinion

of His Majesty's Government, afford a sufficient answer to the claims made in the preceding summary of the position taken up in Their Highnesses' Note. A Federation is the union of a number of political communities for certain common purposes: and every such union necessarily involves that some of the powers of each federating community shall with its assent thereafter be exercised by a central authority or authorities on behalf of all. It is this organic connection between the federal units themselves and between each of them and the central authority which distinguishes a federation from a mere alliance or confederacy. His Majesty's Government have never contemplated a Federation of India only as an association, in which British India on the one hand and the Indian States on the other would do no more than act in concert on matters of common concern. From an early stage, discussions have centred on the creation of an organic union between the two, with a Federal Government and Legislature exercising, on behalf of both, the powers vested in them for that purpose.

(iii) In ordinary circumstances, where communities desire to federate, they determine by mutual negotiation the form of federal constitution which they desire to establish; and, if they are independent States, they themselves bring the Federation into existence as soon as agreement is reached. If they have been, though autonomous communities, subject to the British Crown, they have sought the sanction of an Act of Parliament which alone could make the Federal Constitution a legal reality throughout the whole area of the new Federation. The circumstances of India demand a different procedure. Some of the communities proposed to be included in the new Federation are not yet autonomous, and cannot federate unless enabled to do so by Act of Parliament; the others are neither British territory nor subject to the authority of Parliament. Nor could the Provinces of British India and the Indian States meet together and agree upon a Federal Constitution. The Provinces had not the legal power to do so, and the variety and number of the Indian States would apart from other considerations have precluded it.

(iv) It appears to His Majesty's Government that a Federation of India can be brought into existence in one way only. They have ascertained so far as they were able the opinion both of British India and of the Indian States, and have formed with the guidance of the Joint Select Committee their own judgment on the problems involved; and they have now themselves framed a constitution and have embodied it in a Bill which they have invited Parliament to pass into law. The Government of India Bill, if it becomes an Act, will be binding upon British India, because British India is subject to the authority of Parliament. The Act would not as such be binding upon the Indian States, and it is incorrect to suggest, as Their Highnesses' Note seems to imply, that there is anything in clause 6 of the Bill or in the draft of the Instrument of Accession

which affords ground for an allegation to the contrary. So far as regards the States, the Bill, when it has become law, will provide the machinery whereby the Indian States may severally accept that Constitution and thus become part of the Federation, not because the Act is an Act of Parliament, but because it embodies a Constitution to which they have of their own volition acceded.

(v) The Instrument of Accession is intended to be the formal expression by a Ruler of his desire to enter the Federation, which, when accepted by His Majesty, will make the State a constituent member of the Federation as soon as the latter comes into being. By thus acceding, a Ruler necessarily accepts as binding upon him the Constitution as a whole. The Constitution must be in the form of an Act of Parliament, because in no other way could it be binding upon British India; but it will owe its authority in a Federated State to the Instrument of Accession of the Ruler. That the constitutional structure must be accepted as a whole seems obvious. In Their Highnesses' Note, it is contended that not only ought each Ruler to be able to specify those sections of the Act which he is willing to accept, but also that the Federal Constitution as regards each State is to be looked for exclusively in the Instrument of Accession of that State. It is not clear from the Report of the Ministers' Committee whether even acceptance of the sections specified is not to be made subject to qualifications and conditions. Such a conception of Federation would imply the possibility not only of different Constitutions for the States and for British India, but even of a variety of Constitutions among the States themselves.

(vi) Nevertheless, though His Majesty's Government are of opinion that the Constitution itself must be accepted as a whole, it has always been common ground that the circumstances of different States might properly justify some variation in the powers exercised in relation to those States by particular Federal organs. Accordingly clause 6 of the Bill enables a Ruler in his Instrument of Accession to exclude the power of the Federal Legislature to make laws for his State in respect of some of the items in the Federal Legislative List and to attach conditions and limitations to his acceptance of others; and since by clause 8 the executive authority of the Federation is correlated to the legislative power, it follows (and indeed it is expressly so provided) that a Ruler can to the same extent exclude the exercise of the executive authority in his State or qualify it by corresponding conditions or limitations. But His Majesty's Government recognize that in a few instances the Bill does confer an executive authority on the Federation which is not related to an item in the Federal Legislative List, and it is undoubtedly the case that, as the Bill stands at present, a Ruler could not by his Instrument of Accession exclude or qualify the executive authority of the Federation in respect of those matters. It may be that this has excited the apprehensions of Their Highnesses, and His Majesty's Government are prepared to examine afresh any particular clauses

to which in this connection the States may desire to draw attention. Some of these clauses, as for instance clauses 129 to 132, are referred to later in this Memorandum and suggestions are made with regard to them.

(vii) His Majesty's Government are of opinion that clause 6, if analysed and correctly interpreted, does not disclose any differences which can be justly described as fundamental or vital. From their point of view it is essential that there should be a single constitution and not a multiplicity of constitutions; they realise that the States on the other hand desire to secure that the method of their entry into Federation should be so expressed as not to subject them to any risk of finding their powers and jurisdiction diminished beyond the point which they contemplated when they executed their Instrument of Accession. His Majesty's Government are confident that it is not impossible to reconcile these two points of view, and they believe that the suggestions in this memorandum with regard to other clauses, for example, clauses 45, 127 and 129–132, will facilitate an adjustment of views on clause 6.

(viii) Their Highnesses further lay stress on what they describe as the bilateral nature of the Instruments of Accession. These Instruments are "bilateral," in so far as they have no binding force until His Majesty has signified his acceptance of them; but His Majesty's Government cannot on that ground accept the view that they are to be described as "treaties." Such rights and obligations as flow from the execution and acceptance of an Instrument of Accession are to be found in the terms of the Act, subject only to those conditions and limitations set out in the Instrument for which the Act makes provision. The Crown assumes no obligations by virtue of its acceptance of the Instrument of Accession other than those which are defined in the Act. It is no doubt true that, when a Ruler by his Instrument of Accession recognises certain specified matters as Federal, the Crown by accepting the accession impliedly assents to a modification in respect of those matters of its former relations with the State, and renounces in favour of the Federation any rights, authority or jurisdiction which it may hitherto have exercised in connection with them. It was in this sense that His Majesty's Government understood the terms used at the meeting presided over by Lord Halifax during the Third Round Table Conference to which Their Highnesses refer. But subject to this, all the Crown's rights and obligations in relation to the State remain unaffected. His Majesty's Government have assumed that this was not open to argument; but in any event they are clear that the matter is not one which could properly be dealt with in a document of which the purpose is to regulate the relations of the acceding State with the Federation.

(ix) His Majesty's Government understand that the States feel apprehensive as regards the effect of their acceptance of the legislative and executive authority of the Federation in certain

matters upon their relations with the Crown in other matters; and these apprehensions have no doubt also influenced their Highnesses in the claim made in paragraph 9 of their Note that the Bill should reproduce in some form the provisions of Section 132 of the existing Government of India Act, which provides that all treaties made by the East India Company are, so far as they are in force at the commencement of the Act, binding on His Majesty.

This section appeared first in the Government of India Act, 1858, where it was obviously required by reason of the transfer which that Act effected of all the rights and obligations of the East India Company to the Crown; and it was only re-enacted in the Government of India Act of 1915, because that Act consolidated existing Statutes relating to India, and not because it was thought necessary to re-affirm obligations which the Crown had already assumed. The Crown's engagements towards the Indian Rulers need no re-affirmation by Parliament. But His Majesty's Government are prepared if the Rulers so desire to consider the insertion in this Bill of a provision to the effect that nothing in the Act will affect the engagements of the Crown outside the Federal sphere. If, in addition, some States desire a re-affirmation of the engagements of the Crown towards them so far as they relate to matters outside the Federal sphere, this would, as on other occasions, more appropriately take some extra-statutory form, and His Majesty's Government will consider how best a satisfactory assurance can be given to those so desiring it. Such an assurance would perhaps most conveniently be given at the time when the execution of Instruments of Accession is accepted by His Majesty.

Clause 8.

(i) The State Ministers ask firstly for specific provision that the "authority of the Federation should extend to placing at the service of the Crown the means of implementing the Crown's obligations to the States," in other words that military forces should be available for the protection of the States. It is believed that the provisions of the Bill are adequate for this purpose, but the matter is being re-examined to make sure that there is no room for doubt upon the point, to which His Majesty's Government attach much importance.

(ii) The Ministers further draw attention to the point that the first paragraph, or as now amended the second paragraph of the proviso to the clause confers executive authority upon the Federation in relation to a matter with respect to which the Federal Legislature has power to make laws which apply in that State, even though no such federal law has actually been passed. This is a point of some complexity. It would not be suitable that in such circumstances the executive authority of the Federation should be completely non-existent, and that in the absence of the passing of the Federal law, the Federation should constitutionally have no *locus standi* whatever. His Majesty's Government are, however, willing to make it clear that

the executive authority of the State would continue in respect of its own laws, being laws not inconsistent with any Federal law applying to the State; and that the executive authority of the State would only be superseded by the executive authority of the Federation when the latter is exercised in virtue of a Federal law.

(iii) The other points raised in relation to this clause appear to be met by the provisions of the clause in its amended form, but it may be desirable to offer the following explanations. Where under clause 124 administration of a subject has, in virtue of an agreement attached to the Instrument of Accession, been undertaken by the Ruler of a State, the executive authority of the Federation is, of course, qualified to the extent that the Federation cannot itself undertake such administration, though it has appeared unnecessary to make any express provision to this effect in view of the opening words of clause 8 "subject to the provisions of this Act."

(iv) The Ministers see difficulty in the words in line 17 of the clause as amended "by virtue of this section." These words are not intended to have any different effect from those "save as expressly provided in this Act" in the first proviso, and this could be made plain. An express provision of this nature would appear to be necessary in view of clauses such as that relating to the Water Tribunal.

Clause 12 (1) (*a*).

The comments made on this clause both in the Ministers' report and in paragraph 12 of the Note to Their Highnesses' letter appear to take no account of the fact that the special responsibilities do not in themselves confer any *powers* on the Governor-General which would not otherwise be within the range of his executive authority. The special responsibilities relate only to his relations with his Ministers in the process of arriving at a decision as to action to be taken in the exercise of the executive authority of the Federation. The first special responsibility therefore would not enable the Governor-General to take any action in a State which the Federal Government was not otherwise competent to take in virtue of clause 8 read with the provisions in the Legislative Lists, and subject, therefore in relation to any State, to any conditions and limitations attached by the Ruler to its acceptance of items in the Federal List. No power of intervention in a State by the Governor-General in a non-federal matter would flow from this clause. It is proper to use the word "India" and not "British India" in the definition of this special responsibility; for example, the Governor-General might find it necessary on some occasions to decline to introduce a Government Bill on a federal subject applying to federated States as well as to British India, which appeared to him to be likely to afford a grave menace to the peace and tranquillity of a State. It will be remembered that the definition of this special

responsibility has remained unchanged since the time of the Third Round Table Conference.

Clause 12 (1) (*g*).

In view of the comments in paragraph 13 of the Note, and in the Ministers' remark on this clause, it may be noted that the provisions of para. XV of the draft Instrument of Instructions have been framed in order to indicate the nature and scope of the rights to be protected. They extend beyond rights directly flowing from any treaty and are not of a class on which it would be possible to secure adjudication by the Federal Court as suggested in paragraph 13 of the Note. The precise means by which such rights are to be determined will be for the Representative of the Crown to decide. The draft Instrument appears also to meet the suggestion made by the Ministers in their comment on this clause.

Clause 26 (4) (*b*).

This provision was inserted to meet what was understood to be the convenience of the States, and if on reconsideration the States in general so desire, it could be omitted.

Clause 28.

In paragraph 17 of the Note, protection is sought against members of the Legislature abusing their privilege of freedom of speech at the expense of Princes. It is possible that clauses 38 (1) (*c*) and 84 (1) (*c*) may need some slight amendment in order to make clear that the words "any matter connected with any Indian State" were intended to provide for the making of rules to deal with discussion of the personal conduct of Princes, and the Instruments of Instruction might call attention to the necessity of making such rules.

Clause 45.

The necessity for breakdown provisions has been admitted on all sides from the earliest period of the discussions. The indefinite operation of special measures taken under clause 45, which is suggested at paragraph 5 of Their Highnesses' Note and in the remarks of the Ministers on this clause, is perhaps only a theoretical possibility, since if a breakdown occurred which was not of a purely temporary nature there is little doubt that it would before long become necessary to amend the Act in important particulars and accordingly to take the States into consultation as to the form of the amending provisions. His Majesty's Government, however, see no objection to meeting any apprehensions that may be felt about this clause by inserting a time limit on its operation. Before the expiry of this time limit either the normal provisions of the Constitution would have resumed their operation or an amending Act would have been passed subject to the safeguards for the States provided by Schedule II.

Clause 71.

(See under clause 28 above.)

Clause 99.

The observations in paragraph 6 of Their Highnesses' Note do not explain clearly the points in which the provisions of part V of the Bill are held to differ from proposals 111 and 117 of the White Paper. As regards the observations by the Ministers' Committee in regard to this clause, sub-clause (2) should be read with Clause 101. The effect of a Federal Act upon a British subject in a State, if the Act relates to a matter in respect to which the State had not federated, would not, by virtue of the Act, impose any duty on the State. The effect of such an Act would be merely extra-territorial, and would be the same as under section 65 (1) (*b*) and (*c*) of the present Government of India Act.

Clause 119.

In the subsidiary list at the end of the Note to their Highnesses' letter, it is suggested that the provisions of clause 119, relating to medical qualifications, should be extended to subjects of Indian States. This suggestion will be carefully examined. It is assumed that the States, in making the proposal, contemplate that the matter should be dealt with on a basis of complete reciprocity.

Clause 123.

It is suggested in paragraph 8 of the Note that sub-section (3) of this clause is superfluous. A provision on these lines is required to avoid the necessity, which would be as inconvenient for the Federation as it would presumably be unsatisfactory to the States generally, of constantly employing federal officers to carry out a federal law in those instances in which administration was not reserved to the State under clause 124. It is of course not intended that such federal legislation should interfere in any way with the obligations of a servant of a State towards his Ruler.

Clause 124.

The deletion of the words "or otherwise" in line 38, which is proposed in paragraph 8 of the Note, might have the unsatisfactory result that the Governor-General might be held to be debarred from obtaining information on the matters in question except by inspection. Obviously it must be open to him for example to ask for reports from the Ruler. Any further detailed provisions on this head could be embodied in the agreement itself. It will be remembered that the provisions of this clause are based on proposals formulated at the Third Round Table Conference. (See Report, Head B (*b*), paragraph 5.)

Clause 127.

This clause is criticised in paragraphs 7 and 8 of the Note and by the States' Ministers. His Majesty's Government admit that the drafting of the first sub-section of this clause may need modification.

The effect of the clause as it stands might be wider than anything which was intended, and redrafting more or less on the lines suggested by the Ministers' Committee will be considered.

The second sub-section follows proposal 129 of the White Paper, which in turn is based on the proceedings of the Third Round Table Conference (see Report Head B (*b*) para. 5). The procedure which the Note suggests of "Letters of Request" does not appear suitable. That method was adopted in clause 201 in order to meet the special relations in which the Federal Court stands towards a State High Court, which find no parallel in the relations of the Governor-General to the Ruler of a State.

Clauses 129–132.

The machinery of the Water Tribunal and the Governor-General's power of giving directions in this field would under the Bill operate in regard to a federated State. This is one of the very few instances in which the effect of the Bill would be to subject a Federated State to a Federal Authority (in this case the Governor-General in discretion) otherwise than by virtue of acceptance of an item in the Legislative List. These provisions were first formulated at a somewhat late stage of the deliberations of the Joint Select Committee and have not previously been discussed with representatives of the Indian States. His Majesty's Government believe that these provisions would be as much to the advantage of the States as of British India, but they agree that their application in relation to a Federated State is a matter for discussion. They see no objection to proposing to make provision in the Bill whereby a State could on accession agree or not to come within the scope of these clauses. A Federated State which did not accept these provisions would, of course, be in the same position as an unfederated State in the case of dispute arising.

Clause 136, *clause* 289 (2), *and items* 43, 44, 51 *and* 52 *of the Federal Legislative List.*

These provisions are referred to in paragraphs 18, 19 and 20 of the Note and by the Ministers under the Head "Finance."

(i) His Majesty's Government do not dissent from the opinion recorded by the Joint Select Committee that so far as can be foreseen it is unlikely that the provincial share of distributable taxes on income could be higher than 50 per cent. But, following the recommendation of the Joint Select Committee, they did not insert any provisions in this respect in the Bill, since the fixing of the percentage could best be determined after the review by the proposed expert Enquiry. The Order in Council fixing the percentage would, of course, have been made before the States are invited to accede to the Federation. It is obvious that His Majesty's Government have themselves a substantial interest in seeing that an adequate share of

the taxes on income is reserved to the Federation. Similar considerations apply to the fixing of the two periods referred to in sub-section (2). The omission from the Bill of any limit of time is designed to implement the Joint Select Committee's recommendation on this point.

(ii) The circumstances in which the federal surcharge on income tax is to be imposable are governed by paragraph xxiii of the draft Instrument of Instructions. The conditions therein laid down are not of a nature suitable for inclusion in the Act itself, and Clause 136 (3) would not be strengthened by the insertion in the Bill of words relating to emergency or financial stress.

(iii) The States accession to the subject of corporation tax in item 44 of the Federal Legislative List would, of course, be subject to conditions or limits to be expressed in the Instrument of Accession. It has always been recognised that two such conditions should be that the accession of the State should, in respect of this item, not take place for 10 years, and that special arrangements should be permissible for providing that the State should, if the Ruler so desired, make payment itself instead of the companies concerned making payment direct. Any further conditions could be considered in connection with the negotiations for the Instruments of Accession.

(iv) Apart from this qualification, and subject to the special provisions relating to a surcharge on taxes on income, no provision is made for the imposition of direct taxation by the Federation in a State, unless at some future date some States may desire to accede to taxation entries within items 46–56 of the Federal Legislative List. This is admittedly an unlikely development at any near date, but if in future any State should desire to take such a course, there is no reason why provision should not be made for admitting it to corresponding benefits, and Clauses 135 and 136 have been drafted accordingly.

(v) The question of attachment of conditions to acceptance of item 43 of the Federal Legislative List can, as in other instances, be considered in connection with the negotiation of the terms of the Instrument of Accession; but neither in the White Paper nor in the recommendations of the Joint Select Committee can any support be found for the proposal that federal excises should be regarded as in the nature of emergency taxes.

(vi) The reference to item 52 of the List, in connexion with Corporation tax, seems to be based on a misunderstanding. Item 52 of List I relates only to taxes on capital. Possibly there is some confusion with item 37 of the now superseded list on page 153 of the Joint Select Committee Report, which included taxes on the capital of companies. That item finds no place in the List in the Bill, and instead there is the item (No. 44) "Corporation tax," which expression is defined in Clause 289 in a way that clearly limits it to taxes

on income, so that any suggestion that item 44 might be held to include taxes on capital can only be based on a misconception.

The description of super-tax in the Indian Income-tax Act, while appropriate in that place, does not provide any clear basis of differentiation between income-tax and super-tax, and would therefore be valueless in the present Bill, where the purpose is to secure such differentiation. The definition in Clause 289 is designed to secure the very purpose which is understood to be aimed at by the States, viz. to include a tax of the nature of the existing Indian super-tax on companies, while excluding one like the Indian income-tax which, while in form levied on companies, is really in effect passed on to the shareholders.

Clause 145.

This clause is referred to in para. 21 of the Note and by the States' Ministers. The definition of privileges and immunities in sub-section (6) is based upon the Report of the Davidson Committee. The effect of this sub-clause is of the nature of a protection to the States rather than the reverse, since it limits within the range so defined the matters which the Crown may, when the Instruments of Accession are being negotiated, require a State to acknowledge as financial privileges or immunities. Without such a definition the possible range of such privileges or immunities would be extended. His Majesty's Government have, however, no objection to a general formula in relation to such privileges and immunities if this is preferred by the States to the somewhat narrower definition. Exception is also taken to sub-section (8) of this clause. His Majesty's Government agree that this sub-section might be omitted.

Clause 147.

Exception to the provisions in this clause are taken in paras. 21 and 22 of the Note and by the States' Ministers. The origin of these provisions is proposal 143 of the White Paper to which, so far as His Majesty's Government are aware, no previous objection has been raised by the States. It is nevertheless true that the clause as drafted has a wider effect than the proposal in the White Paper, which limited adjustments of the character in question to those cases in which special provision was made by an Act of the Federal Legislature. No recommendation on this point was recorded by the Joint Select Committee and the departure from the proposal in the White Paper was not intentional. His Majesty's Government are prepared to consider how the point can best be adjusted.

Clause 151.

This is referred to in No. 4 of the subsidiary list at the end of the Note. It would not be possible to exempt from local taxation all property owned by States in British India, but His Majesty's Government are willing to consider the insertion of provisions in

the Bill to prevent the abolition at any time of the existing immunity from taxes on moneys invested in Government securities by a State Darbar or by a Provincial Government.

Clauses 175 *to* 189.

Questions in connection with Railways will be separately dealt with.

Clause 279.

This is referred to in the second item in the subsidiary list appended to the Note. It is the case that Clause 279 does not give effect to the proposal in the Report of the Joint Select Committee (para. 367) that subjects of Federated States should, without any special procedure, be regarded as eligible for appointment to federal services and His Majesty's Government have no objection to the insertion of provisions in the Bill to this effect.

No. 8.

DRAFT INSTRUMENT OF ACCESSION.*

(This form will require adaptation to certain States with limited powers.)

Whereas proposals for the establishment of an Indian Federation, comprising such Indian States as may accede thereto and the Provinces of British India constituted as autonomous Provinces, have been discussed between representatives of His Majesty's Government, of the Parliament of the United Kingdom, of British India and of the Princes and Rulers of the Indian States:

And whereas a Constitution for a Federation of India has been approved by Parliament and embodied in the Government of India Act, 1935, but it is by that Act provided that the Federation shall not be established until such date as His Majesty may by proclamation declare:

And whereas the Act cannot apply to any of the territories of *A.B.* save with his consent and concurrence:

And whereas *A.B.*, in the exercise of the sovereignty in and over *X.* in him vested, is desirous of acceding to the said Federation:

1. Now, therefore, *A.B.* hereby declares that, subject to His Majesty's assent, he accedes to the Federation, and subject always to the terms of this Instrument declares his acceptance of the provisions of the said Act as applicable to his State and to his subjects with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation may exercise in relation to his State and to his subjects such functions as may be vested in them by or under the said Act, in so far as the exercise thereof is not inconsistent with any of the provisions of this Instrument.

2. And *A.B.* hereby declares that he accepts the matters specified in the First Schedule to this Instrument as the matters with respect to which the Federal Legislature shall have power to make laws in relation to his State and to his subjects, but subject in each case to the conditions and limitations, if any, set out in the said Schedule.

3. And *A.B.* hereby declares that he assumes the obligation of ensuring that due effect is given to the provisions of the said Act within the territories of his State, so far as they are applicable therein by virtue of this Instrument.

* This draft is a later draft than that referred to in the preceding documents and contains some modifications.

4. And *A.B.* hereby declares that the privileges and immunities, as defined in Part VII of the said Act, which are enjoyed by his State, are those specified in the Third Schedule to this Instrument, that the annual values thereof, so far as they are not fluctuating or uncertain, are those specified in the said Schedule, and that he agrees that the values to be attributed to such of them as are fluctuating or uncertain in value shall be determined from time to time in accordance with the provisions of that Schedule.

5. And *A.B.* agrees that this Instrument shall be binding on him as from the date on which His Majesty signifies his acceptance thereof, provided that if the said Federation is not established before the . day of nineteen hundred and thirty , this Instrument shall, on that day, become null and void for all purposes whatsoever.

6. And *A.B.* hereby declares that save as otherwise expressly provided in this Instrument he reserves the sovereignty in and over *X.* in him vested.

7. And *A.B.* hereby declares that he makes these declarations for himself, his heirs and successors, and that accordingly any reference in this Instrument to *A.B.* is to be construed as including a reference to his heirs and successors.

SCHEDULES.

NOTE.—The following Article is intended for inclusion in the Instrument only in the case of States in respect of which provision is made in the Instrument for an agreement as contemplated in clause 124 of the Bill.

And whereas *A.B.* is desirous that functions in relation to the administration in his State of laws of the Federal Legislature applying therein shall be exercised by himself and by his officers, and the terms of an agreement in that behalf have been mutually agreed between *A.B.* and the Governor-General and are set out in the second Schedule to this Instrument:

Now, therefore, *A.B.* hereby declares that he accedes to the Federation on the assurance that the said Agreement will be executed and the Agreement, when executed, shall be deemed to form part of the Instrument and shall be construed therewith.

3624) Wt. 3414/1260 3000 3/35 [I.O.P.]

ROYAL LIBRARY OF THE BOMBAY BRANCH OF THE SOCIETY

00110152

Digitized with financial assistance from

H T Parekh FOUNDATION

An Initiative by HDFC

WITH YOU, RIGHT THROUGH

on 10 January, 2019